

Jul 17, 2019

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,)

Plaintiff,

V.

ABEL MENDOZA, JR.,

Defendant.

NO. 203 GB 0343 LBS 1

**ORDER GRANTING MOTION
FOR IMPOSITION OF A
REDUCED SENTENCE**

20

BEFORE THE COURT is Defendant's Motion For Imposition Of A Reduced Sentence Pursuant To Section 404 Of The First Step Act (ECF No. 75). This motion is heard without oral argument.

Pursuant to a Plea Agreement filed November 12, 2009 (ECF No. 43), Defendant pled guilty to Count 4 of the Indictment charging him with Distribution of 5 Grams or More of Cocaine Base in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(B)(iii). Because the United States filed a notice of enhanced penalty pursuant to 21 U.S.C. § 851(ECF No. 38), the offense carried a statutory minimum term of imprisonment of 10 years (120 months) and a statutory minimum term of supervised release of 8 years.¹ On March 18, 2010,

¹But for Defendant's prior felony drug conviction, he would have been subject to a five year mandatory minimum term of imprisonment and a four year

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FOR SENTENCE REDUCTION- 1**

1 in accordance with the joint recommendation of the Government and Defendant
2 contained in the Plea Agreement, this court sentenced Defendant to 120 months
3 imprisonment and 8 years supervised release. (ECF No. 59). Defendant's
4 current release date is January 3, 2023 per the Federal Bureau of Prisons inmate
5 locator website. <https://www.bop.gov/inmateloc/>

6 Defendant's conviction and sentence preceded the Fair Sentencing Act of
7 2010 which became effective on August 3, 2010. Section 404 of the First Step
8 Act of 2018 makes retroactive Sections 2 and 3 of the Fair Sentencing Act to
9 those sentenced before the effective date of the Fair Sentencing Act. Section 2
10 of the Fair Sentencing Act increased the drug amounts triggering mandatory
11 minimums for crack (cocaine base) trafficking offenses from 5 grams to 28
12 grams with respect to the 5-year minimum, and from 50 grams to 280 grams
13 with respect to the 10-year minimum. Section 3 of the Fair Sentencing Act
14 eliminated the 5-year mandatory minimum sentence for simple possession of
15 crack cocaine. *Dorsey v. United States*, 567 U.S. 260, 269, 132 S.Ct. 2321
(2012).

16 Per the Presentence Investigation Report (PSIR) filed in this matter,
17 Defendant was responsible for 3.3. grams of cocaine and 23.4 grams of cocaine
18 base. (ECF No. 58 at Paragraph 69). Even if the 3.3 grams of cocaine are
19 included, the total amount of drugs is less than 28 grams and as such, the
20 Defendant is no longer subject to the 10 year mandatory minimum term of
21 imprisonment provided for in 21 U.S.C. § 841(b)(1)(B)(iii). Instead, as a result
22 of the retroactive application of the Fair Sentencing Act, Defendant is no longer
23 subject to any mandatory minimum, but rather to a statutory maximum term of
24 imprisonment of 30 years and a minimum term of 6 years supervised release as

25
26 minimum term of supervised release.

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28 **FOR SENTENCE REDUCTION- 2**

1 provided for in 21 U.S.C. § 841(b)(1)(C).

2 Because Defendant is eligible for relief under the Fair Sentencing Act, it
3 is necessary to recalculate his Base Offense Level under the Sentencing
4 Guidelines. Since two different controlled substances are at issue, the drug
5 conversion tables must be used to come up with a Converted Drug Weight
6 amount in order to ascertain Defendant's Base Offense Level. Application Note
7 8(B) to U.S.S.G. § 2D1.1. 3.3 grams of cocaine converts to 660 grams of
8 Converted Drug Weight (1 gram of cocaine equals 200 grams of Converted
9 Drug Weight) and 23.4 grams of cocaine base converts to 83,561.4 grams of
10 Converted Drug Weight for a total of 84,221.4 grams or 84.2214 kilograms.
11 Application Note 8(D) to U.S.S.G. § 2D1.1. This amount results in a Base
12 Offense Level of 22 (at least 80KG but less than 100KG of Converted Drug
13 Weight). U.S.S.G. § 2D1.1(c)(9). With a three level reduction for acceptance
14 of responsibility, Defendant's Total Offense Level is 19. Based on a Criminal
15 History Category of II, the advisory guidelines range is 33-41 months.

16 Relief under the First Step Act is discretionary. The Act at §404(c)
17 provides that “[n]othing in this section shall be construed to require a court to
18 reduce any sentence pursuant to this section.” While the Government concedes
19 Defendant's eligibility for relief, it contends the court should exercise its
20 discretion to deny relief due to Defendant's criminal history in drug trafficking
21 dating back to 1994, it “appear[ing] that the Defendant had a central role in [a]
22 larger drug trafficking organization,” and Defendant's disciplinary record while
23 incarcerated which includes an attempted escape in November 2010, possession
24 of an unauthorized item and possession of gambling paraphernalia in November
2017, and disruptive conduct (e-mail abuse) in December 2018.

25 Defendant's criminal history and his drug trafficking role was fully
26 considered by the court when it sentenced him in March 2010. The Defendant

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28 **FOR SENTENCE REDUCTION- 3**

1 has not been a model inmate, but it is noted that the most severe of his
2 disciplinary offenses occurred almost nine years ago, and there was a seven year
3 gap between that offense and the less serious offenses for which he was
4 sanctioned in November 2017. The court is compelled to give less weight to
5 Defendant's disciplinary record considering the length of time he has been in
6 federal custody and the fact that were he sentenced today, he would be subject
7 to a high-end guideline sentence of 41 months, 79 months less than the 120
8 months mandatory minimum the court imposed in 2010.

9 The court will reduce Defendant's term of imprisonment to "time served,"
10 but it will maintain the supervised release term of eight years. Eight years of
11 supervised release remains warranted in light of Defendant's prison disciplinary
12 record. After the expiration of one year of supervised release, the Defendant
13 can move the court to consider early termination of supervised release pursuant
14 to 18 U.S.C. §3583(e)(1).

15 Defendant's Motion For Imposition Of A Reduced Sentence Pursuant To
16 Section 404 Of The First Step Act (ECF No. 75) is **GRANTED**. Defendant's
17 sentence is reduced to "time served" to be followed by an eight (8) year term of
18 supervised release. Defendant shall be released from federal custody forthwith.
19 Defendant's *pro se* "Motion For Application Of The First Step Act Of 2018"
20 (ECF No. 73) is **DISMISSED** as moot.

21 **IT IS SO ORDERED.** The court will enter Form AO247 consistent with
22 this order. Copies of Form AO247 and this order will be provided to counsel of
23 record, the U.S. Probation Office, and the U.S. Bureau of Prisons.

24 **DATED** this 17th day of July, 2019.

25 *s/Lonny R. Sukko*
26

27 LONNY R. SUKCO
28 Senior United States District Judge

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30 **FOR SENTENCE REDUCTION- 4**